

MAR 8 1993

OFFICE OF THE CLERK

No. 92-1113

IN THE  
**Supreme Court of the United States**

October Term, 1992

GARY M. McKNIGHT,

*Petitioner,*

v.

GENERAL MOTORS CORPORATION,

*Respondent.*

On Petition For A Writ Of *Certiorari* To The United States  
Court Of Appeals For The Seventh Circuit

**RESPONDENT'S BRIEF IN OPPOSITION**

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March 8, 1993

**QUESTIONS PRESENTED FOR REVIEW**

1. Whether this Court should review the court of appeals decision that Section 102 of the Civil Rights Act of 1991 does not apply to cases pending on appeal on the Act's effective date?
2. Whether this Court should review the court of appeals sanction of Petitioner's attorney for filing an appeal which he had no reason to believe would be successful?

**RULE 29.1 LIST**

Pursuant to Supreme Court Rule 29.1, General Motors Corporation states that it has no parent corporation. It owns an interest in the following companies which are not wholly-owned subsidiaries:

AC Bakony Kft. (Hungary)  
 AMBRAKE Corporation (USA)  
 AMRAAM International Licensing Company (USA)  
 American Manufacturing Systems, Inc. (USA)  
 Asset Leasing GmbH (West Germany)  
 Atlantic Satellites Ltd. (Ireland)  
 Aura Srl (Italy)  
 Banque de Credit General Motors (France)  
 Beijing International Information Processing Company Limited (Peoples Republic of China)  
 British Caledonian Flight Training Limited (England)  
 CAMI Automotive, Inc. (Canada)  
 Carus Grundstücks-Vermietungsgesellschaft GmbH & Co. Object Kuno 65 KG (West Germany)  
 Carus Grundstücks-Vermietungsgesellschaft GmbH & Co. Object Leo 40 KG (West Germany)  
 China Management Systems Corporation (China)  
 Comlinear Corporation (USA)  
 Convesco Vehicles Sales GmbH (West Germany)  
 DRB s.a./n.v. (Belgium)  
 Daewoo Automotive Components, Ltd. (Korea)  
 Daewoo Motor Co., Ltd. (Korea)  
 Delkor Battery Company, Ltd. (Korea)  
 Diavia SpA (Italy)  
 EPEC S.A. (Brazil)  
 Earth Observation Satellite Company (USA)  
 Emperion Corporation (USA)  
 Fabrica Colombiana de Automotores S.A. ("Colomotores") (Columbia)

Federal Computer Services Corp. (USA)  
 Federal Integrated Systems Corp. (USA)  
 G & F Company (USA)  
 GM Allison Japan Limited (Japan)  
 G.M.A.C. Financiera de Colombia S.A. Companie de Financiamiento Comercial (Columbia)  
 GMFanuc Robotics Canada Ltd. (Canada)  
 GMFanuc Robotics Corporation (USA)  
 GMFanuc Robotics Europe GmbH (West Germany)  
 GMFanuc Robotics Italia S.r.l. (Italy)  
 GMFanuc Robotics (U.K.) Ltd. (England)  
 GMFanuc Robotique France S.A.R.L. (France)  
 General Motors Bankgesellschaft GmbH (Austria)  
 General Motors del Ecuador S.A. (Ecuador)  
 General Motors France Automobiles S.A. (France)  
 H & D Radio Frequency Identification Products (USA)  
 H & R Company (USA)  
 HBC (USA)  
 HKV (USA)  
 Hughes-Kenwood RDSS, Inc. (USA)  
 IBC Vehicles Limited (United Kingdom)  
 I.K. Coach Co., Limited (Japan)  
 ITC Inland Teknik Oto Yan Sanayi Sirketi (Turkey)  
 International Electro-Optical Industry Anonim Sirketi (Turkey)  
 Interpractice Systems, Inc. (USA)  
 Kabelwerke Reinshagen GmbH (West Germany)  
 Kabelwerke Reinshagen Werk Berlin GmbH (West Germany)  
 Kabelwerke Reinshagen Werk Neumarkt GmbH (West Germany)  
 Koram Plastics Company, Ltd. (Korea)  
 LEA GP Incorporated (USA)  
 Light Helicopter Turbine Engine Company (USA)  
 MET (USA)

Metal Casting Technology, Inc. (USA)
Millbrook Pension Management Ltd. (England)
Neodata Holdings, Inc. (USA)
New United Motor Manufacturing, Inc. (USA)
Nippon EDS Co., Ltd. (Japan)
Opel-Automobilwerk Eisenach-PKW GmbH (West Germany)
Opel-Wohnbau GmbH (West Germany)
Packard CTA Pty. Ltd. (Australia)
Packard Electric Vas kft (Hungary)
Saab Automobile AB (Sweden)
Shinsung Packard Company, Ltd. (Korea)
Societe Francaise des Amortisseurs de Carbon S.A. (France)
Sung San Company, Ltd. (Korea)
Systems Technology Management Corporation (Korea)
T.A.D. Communications Company (USA)
3DK Limited (United Kingdom)
Truck and Bus Engineering U.K. (USA)
United Australian Automotive Industries Limited (Australia)
Vanguardia Componentes Automotivas, S.A. (Brazil)
Vehicle Test Technology, Inc. (USA)

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**On Petition For A Writ Of Certiorari To The United States  
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**RESPONDENT'S BRIEF IN OPPOSITION**

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Respondent, General Motors Corporation ("GM"), respectfully requests that this Court deny the petition for a writ of certiorari seeking review of the United States Court of Appeals for the Seventh Circuit's decision in *McKnight v. General Motors Corporation*, Nos. 92-2580 and 92-2604, entered on September 30, 1992.

**COUNTERSTATEMENT OF THE CASE**

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After GM terminated his employment in 1983, Petitioner Gary M. McKnight ("McKnight") filed this action, in which he alleged violations of 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e. In October 1988, a jury returned a verdict for McKnight on his § 1981 claims and, based on the jury's verdict, the district court entered judgment for McKnight on his Title VII claims. GM appealed the judgment.

While the case was pending before the Seventh Circuit, this Court decided *Patterson v. McLean Credit Union*, 491 U.S. 164

(1989). Based on the *Patterson* holding, the Seventh Circuit reversed the portion of the district court's judgment awarding McKnight relief under § 1981. McKnight asked this Court to review the Seventh Circuit's decision, but his petition for certiorari was denied on March 18, 1991. *McKnight v. General Motors Corp.*, 908 F.2d 104, 108-09 (7th Cir. 1990), *cert. denied*, U.S. , 111 S. Ct. 1306 (1991).

The Seventh Circuit remanded the case to the district court with instructions to dismiss McKnight's § 1981 claims and reconsider his right to reinstatement or, in lieu thereof, to front pay in connection with his Title VII claims. Pursuant to the court of appeals' mandate, the district court dismissed McKnight's § 1981 claims and renewed its denial of reinstatement and front pay. McKnight appealed the district court's judgment concerning the denial of reinstatement and front pay, but he did not appeal the dismissal of his § 1981 claims.

While the issues of McKnight's right to reinstatement or front pay were again pending on appeal before the Seventh Circuit, Congress passed the Civil Rights Act of 1991 ("the Act"). Section 102 of the Act reverses this Court's decision in *Patterson*. McKnight then moved the court of appeals for leave to amend his Notice of Appeal to include the dismissal of his § 1981 claims. The Seventh Circuit denied his request. McKnight then filed a motion in the district court under Rule 60(b)(6) of the Federal Rules of Civil Procedure, and asked the district court to apply Section 102 of the Act retroactively to revive his dismissed § 1981 claims. The district court granted McKnight's motion and reinstated the portion of the trial court's judgment granting him relief under § 1981.

Before the expiration of GM's time to appeal the amended judgment, the Seventh Circuit issued its decision in *Mozee v. American Commercial Marine Serv. Co.*, 963 F.2d 929 (7th Cir.), *cert. denied*, U.S. , 113 S. Ct. 207 (1992), *rehearing denied*, U.S. , 113 S. Ct. 644 (1992), that the Act did not apply to

pending cases. Based on *Mozee*, the district court reversed itself and granted GM's motion to vacate the amended judgment on the § 1981 issue. McKnight then appealed the district court's decision.

After McKnight filed his appeal, the Seventh Circuit again decided that the Act did not apply retroactively. *Luddington v. Indiana Bell Tel. Co.*, 966 F.2d 225 (7th Cir. 1992). At that time no circuit had applied any portion of the Act retroactively. GM informed McKnight that, based on the current state of the law, it considered his appeal frivolous and would move for sanctions if he did not voluntarily withdraw it. McKnight refused to withdraw his appeal. On September 30, 1992, the Seventh Circuit granted GM's motion to dismiss McKnight's appeal and imposed sanctions in the amount of \$500.00 against McKnight's counsel. McKnight seeks review of that decision.

## REASONS FOR DENYING THE WRIT

### I.

#### THIS COURT HAS ALREADY GRANTED CERTIORARI IN TWO OTHER CASES ON THE ISSUE OF THE ACT'S RETROACTIVITY.

On February 22, 1993, this Court agreed to review the issue of the Act's retroactivity in *Landgraf v. USI Film Products*, Case No. 92-757, and *Rivers v. Roadway Express, Inc.*, Case No. 92-938. GM believes the appropriate action in this case is to defer resolution of McKnight's petition for a writ of certiorari until after the Court addresses the retroactivity issue in *Landgraf* and *Rivers*.

### II.

#### THE ALLEGED IMPROPER IMPOSITION OF SANCTIONS DOES NOT PRESENT A BASIS TO GRANT MCKNIGHT'S PETITION.

McKnight admits that at the time he appealed to the Seventh Circuit seeking retroactive application of the Act, "he had no

reasonable expectation that his appeal would be successful." (Petition for Certiorari, p. 6). By the time GM requested McKnight to withdraw his appeal, the Seventh Circuit had issued two decisions refusing to apply substantive portions of the Act retroactively. Furthermore, the only other circuits that had addressed the issue at that time had similarly held that the Act was not to be given retroactive effect. Under these circumstances, McKnight's appeal was clearly frivolous and the Seventh Circuit's imposition of sanctions was proper.

Moreover, even if the imposition of sanctions was not proper, that is not a basis for granting certiorari in this case. Contrary to McKnight's assertions, this is not an issue with broad implications; it simply involves the imposition of sanctions by one court against one attorney. This Court should not expend its valuable time reviewing an order with such limited effect.

#### CONCLUSION

For all of the reasons stated above, GM respectfully requests that the Court defer resolution of McKnight's petition for a writ of certiorari on the Act's retroactivity issue and deny his petition on the sanctions issue.

Dated this 8th day of March, 1993.

Respectfully submitted,

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